

RECEIVED

MAY 09 2002

OFFICE OF THE COMMISSIONER

RECEIVED
MAY 09 2002
TECH CENTER 1600/2900
PATENT

RECEIVED

MAY 09 2002

GROUP 3600

Docket No.: 50179-087

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Robyn Joyce RUSSELL, et al.

Serial No.: 09/776,110

Group Art Unit: 1652

Filed: February 06, 2001

Examiner: Robyn Joyce Russell

For: MALATHION CARBOXYLESTERASE

**PETITION TO WITHDRAW THE NOTICE OF ABANDONMENT OR IN THE
ALTERNATIVE PETITION TO REVIVE UNDER 37 CFR 1.137(b)**

Commissioner for Patents
Washington, DC 20231

Sir:

Applicants note the Notice of Abandonment under 37 CFR 1.53(f) or (g) issued in the above-identified application.

This application was held to be abandoned on the ground that Applicants failed to file a complete, timely and proper reply to the Notice to File Corrected Application Papers mailed April 20, 2001. The Notice to File Corrected Application Papers required a statement that the content of the sequence listing recorded in computer readable form be identical to the written sequence listing; that a copy of the sequence listing in computer readable form be provided, and an abstract be submitted, was received by Applicant's attorneys on April 24, 2001.

A Response was filed on May 17, 2001 which addressed the sequence listing requirement but failed to supply the Abstract for the application. This was an oversight and was only brought to the attention of Applicants' attorneys on December 31, 2001

when a Notice of Incomplete Reply (Nonprovisional) mailed December 21, 2001 was received. A Response to this Notice was promptly filed on January 8, 2002 to present an Abstract for the application. It is respectfully pointed out that the Notice of Incomplete Reply (Nonprovisional) was mailed two months after the statutory time period had expired to reply to the Notice to File Corrected Application Papers mailed April 20, 2001. Therefore, at the time the Patent Office issued the Notice of Incomplete Reply (Nonprovisional) the application would in fact already been abandoned since the statutory response date had expired on October 20, 2001 (the six month statutory date).

Further, Applicants submit that neither 37 CFR 1.53(f) or (g) authorizes the U.S. Patent and Trademark Office to hold an application abandoned for failure to supply an abstract to the application. 37 CFR 1.53(f) refers only to providing an oath or declaration, basic filing fee, or correspondence address. Nothing is said about an abstract. Further, 37 CFR 1.53(g) concerns only provisional applications and the requirement is to provide the filing fee and correspondence address.

Applicant submits that these rules do not provide any authority to the U.S. Patent and Trademark Office to hold an application abandoned for failure to provide an abstract on the present facts. Therefore, for these reasons, the Notice of Abandonment should be withdrawn.

If the U.S. Patent and Trademark Office had timely responded to our Reply of May 17, 2001, there would have been time to correct this oversight within the statutory period. For that reason, it is requested that this abandonment be rescinded, that our Response to Notice of Incomplete Reply filed on January 8, 2002 be entered and made of record and the application be returned to pending status. The Petition Fee of \$130.00 is

authorized to be charged to Deposit Account 500417. If, however, after review of the facts, it is deemed that the application will maintain abandonment status, the undersign Petitions for revival of this application as abandoned unintentionally under 37 CFR 1.137(b).

The complete period of abandonment of this application was unintentional, and a proper and complete reply was filed on January 8, 2002 and acknowledged in the Notice of Abandonment received April 19, 2002 as being filed, applicants respectfully petition for revival of the application, and authorize the required petition fee of \$1,280.00 to be charged to Deposit Account No. 500417. It is requested that the Abstract filed on January 8, 2002 be entered and the application be returned to pending status.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

MCDERMOTT, WILL & EMERY



Robert L. Price

Registration No. 22,685

600 13th Street, N.W.
Washington, DC 20005-3096
(202)756-8000 RLP:kmb
Facsimile: (202)756-8087
Date: April 29, 2002